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CONSTITUTIONALITY OF LEGISLATION AFFECTING CORPORATIONS EXCLUSIVELY. — It has been peremptorily decided that corporations as well as natural persons are within the protection of the Fourteenth Amendment;[1] but, like natural persons, they are subject to regulation by the states under the police power, which cuts across that amendment. May police regulations, however, be put upon corporations exclusively? Undoubtedly under the police power there may be classification, but it must be based on some reasonable distinction. In the earlier cases in the United States Supreme Court, the rule was loosely laid down that "special legislation is not class legislation if all persons brought under its influence are treated alike under the same conditions."[2] The later cases define the rule more sharply, and require further that the legislation in its classification bring within its influence all who are under the same conditions.[3] By this test regulations concerning corporations solely, when correcting evils arising only from corporate enterprises, would be constitutional. No doubt it is on this ground that statutes abolishing the fellow-servant rule with regard to railroad corporations[4] are to be upheld; the hazards of railroading afford a reason for the discrimination, and the court takes judicial notice that railroads are run exclusively by corporations.[5] It must be admitted, however, that some courts have sustained these statutes on the ground that the word "corporation" therein is to be construed as also including natural persons.[6] On the other hand, where the evils sought to be checked are incident to private as

[1] Santa Clara County *v.* R. R., 118 U. S. 394, 396; R. R. *v.* Nebraska, 164 U. S. 403.
[2] Missouri Pac. R. R. *v.* Mackey, 127 U. S. 205, 209.
[3] Connolly *v.* Union Sewer Pipe Co., 184 U. S. 540; R. R. *v.* Ellis, 165 U. S. 150.
[4] For a collection of these statutes, see 2 Labatt, Master and Servant, § 743 *et seq.*
[5] See Ballard *v.* Miss. Cotton Oil Co., 81 Miss. 507, 569.
[6] Pittsburgh, etc., R. R. *v.* Lightheiser, 78 N. E. Rep. 1033 (Ind.); Schus *v.* Powers-Simpson Co., 85 Minn. 447.

well as corporate enterprises, laws applicable only to corporations would clearly be unconstitutional.[7] And such was the holding of a recent Indiana case where the statute required railroad and other corporations to answer in damages for injuries to employees caused by superior servants. *Bedford Quarries Co.* v. *Bough*, 80 N. E. Rep. 529. There is no reason in the nature of things why corporations should be treated differently in this respect from large partnerships, such as some express companies, or from individuals.

There is a way, however, in which corporations can be regulated differently from individual enterprises. Today practically every corporation holds its charter subject to amendment, alteration, or repeal by the legislature, at least when the public interest requires it. The law is settled that neither property nor vested rights of a corporation can be taken, without compensation, by the exercise of this power, nor can the aim of the charter be so changed as to alter the original purpose of the grant.[8] But laws such as that in the present case do not transgress any of these limitations, and so could be imposed on domestic corporations under this power of amendment. Similar regulations could be placed upon foreign corporations as a condition precedent to their right to do business within the state, — at least where the business is not interstate commerce, — for a state can exercise unhampered discretion with respect to such privilege.[9] The question then remains, how statutes like the present, general in their wording, are to be construed. Some cases, including the principal case, hold that they cannot be construed as amendments to the incorporation laws, since they are applicable to foreign as well as domestic corporations.[10] Ignoring this objection, other courts construe them as such amendments.[11] Why could not these statutes be held to fulfill at once the twofold function of an amendment to the incorporation laws and a regulation of the permission to foreign corporations to do business within the state? It is a maxim of constitutional law that a decent respect for the legislature and the proper balance of the powers of government require the judiciary not to declare a law unconstitutional unless the necessity is obviously compelling. Therefore, in the absence of statutory[12] or constitutional provisions, such as those of Indiana,[13] regulating the amendment of laws and the enactment of statutes, general laws such as the one under discussion should be upheld on the twofold basis suggested.

ACCEPTING RATE CONCESSIONS UNDER THE ELKINS ACT. — The Elkins Act, amending the Interstate Commerce Act,[1] has received but little judicial interpretation, so that two recent sets of indictments for violation of it must be considered largely experimental. The clause especially concerned pro-

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[7] Ballard *v.* Miss. Cotton Oil Co., *supra*. See Lavallee *v.* R. R., 40 Minn. 249, 252.

[8] Lake Shore, etc., R. R. *v.* Smith, 173 U. S. 684, 698.

[9] Waters-Pierce Oil Co. *v.* Texas, 177 U. S. 28; Hancock Mut. Life Ins. Co. *v.* Warren, 181 U. S. 73, 76.

[10] Johnson *v.* Goodyear Mining Co., 127 Cal. 4.

[11] Shaffer & Munn *v.* Union Mining Co., 55 Md. 74; State *v.* Brown & Sharpe, 18 R. I. 16; R. R. *v.* Paul, 64 Ark. 83; aff. 173 U. S. 404.

[12] See Braceville Coal Co. *v.* People, 147 Ill. 66; State *v.* Haun, 61 Kan. 146.

[13] Burns' Ann. Ind. Stat., §§ 115, 117.

[1] Interstate Commerce Act, 24 Stat. at L. 379; Elkins Act, 32 Stat. at L. 847.